TEOH SOON KOK T/A TSK SUPPLIES TRADING

v.

MBF FINANCE BERHAD

HIGH COURT MALAYA, ALOR SETAR
TUAN MOHD. HISHAMUDIN MOHD. YUNUS J
[CIVIL APPEAL NO. 11-53-95]
17 FEBRUARY 1996

CIVIL PROCEDURE: *Appeal to High Court - Appeal record - Contents - Requirement of O. 49 r. 6(3)(d) Subordinate Courts Rules 1980 - Appeal record to contain* ***"the decision appealed from"*** *- Appellant enclosed a draft judgment - Whether condition satisfied - Meaning of* ***"decision"*** *- Whether includes a judgment in draft - Whether refers only to a sealed judgment of Court - Subordinate Courts Rules 1980 O. 26A, O. 29 rr. 9(4), O. 10(1)(2)(3), 11, O. 49 r. 6(3)(d), O. 52 r.(4)(1)(b).*

WORDS & PHRASES: *"The decision appealed from" - "Copies" - Order 49 r. (6)(3), 6(3)(d) Subordinate Courts Rules 1980.*

The appellant had appealed against the order of the learned Magistrate who had entered summary judgment against him under O. 26A Subordinate Courts Rules 1980 (SCR). Apparently, after having filed the notice of appeal, the appellant proceeded to file the record of appeal pursuant to O. 49 r. 6(3) of SCR. By r. 6(3)(d) of the Order, it is imperative that the record of appeal contain also *"the* ***decision*** *appealed from"*. Accordingly, in purported compliance of r. 6(3)(d), a copy of the draft judgment of the Court was enclosed by the appellant when filing the said appeal record.

Before the learned Judge, the respondent raised a preliminary objection that the appellant had not complied with O. 49 r. 6(3)(d) SCR on the ground that the appeal record did not contain a copy of the *decision* as required by the rule. According to Counsel, what had been enclosed therein, being only a draft judgment, was not a *decision*. The facts showed that the draft judgment had been approved by the solicitors of the parties but was yet to be approved by the Registrar. The primary issue that arose was whether a draft judgment, for the purpose of O. 49 r. 6(3)(d) SCR, is a *decision* of the Court.

Held:

[1] A draft judgment is not a *decision* for the purpose of r. 6(3)(d). It cannot be the intention of the rule that the appellant may enclose in the appeal record a copy of a document which is a manifestation of an unfinished work, of something done halfway. A draft judgment does not bear the seal of the Court, and so, does not have the stamp of authority or the force of law. Strictly speaking, therefore, a draft judgment is not the judgment of the Court.

[2] In the context of the present case, *decision* in r. 6(3)(d) means a sealed document that has undergone the whole process as prescribed by O. 29. In other words, it refers to the judgment that has been approved by the Registrar under O. 29 r. 9(4) and thereafter drawn up and entered in accordance with O. 29 r. 10(1),(2) and (3).

[3] It is immaterial that the draft judgment here had been approved by the solicitors of the parties, as what came out of that is merely a reflection of what the solicitors believe to be the judgment of the Court. The draft still need the scrutiny of the Registrar who, aside from having to ensure that it represents an accurate statement of the Court's decision and complies with the SCR, must also make the necessary amendments if necessary.

[4] The "copies" in O. 49 r. 6(3), in relation to "decision" in paragraph (d) of subrule (3), does not refer to mere photostat copies of the decision. Rather, it refers to either duplicates of the decision obtained pursuant to O. 29 r. 11 or, alternatively, certified copies of the decision obtained pursuant to O. 52 r. 4(1)(b). Uncertified photostat copies, therefore, are not "copies" for the purpose of subrule (3)(d).

[Appeal dismissed]

Cases referred to:
Hasil Bumi Perumahan Bhd. & 5 Ors. v. United Malayan Banking Bhd at p. 333 [1994] 1 CLJ 328 ***(refd)***

Legislation referred to:
Subordinate Courts Rules 1980, O. 26A, O. 29 r. 9(4), rr. 10(1)(2) & (3), r. 11, O. 49 r. 6 (3)(d), O. 52 r. 4 (1)(b)

For the appellant - C Shanmugaiah; M/s. Shanmugiah & Co.
For the respondent - Sharihah bte Mustafa; M/s. Haji Mahmud & Partners

JUDGMENT

Mohd. Hishamudin Mohd. Yunus J

At the Magistrate's Court, Sungai Petani, the plaintiff/respondent succeeded in obtaining a summary judgment against the defendant under O. 26A of the Subordinate Courts Rules 1980. The defendant/appellant appealed to this Court.

In this interlocutory appeal, the main issue is: does the word "decision" in O. 49 r. 6 (3) (d) include a draft judgment.

O. 49 r. 6 (3) states:

> (3) Within three weeks after the filing of the notice of appeal, the appellant shall file the record of appeal in the High Court and the record shall contain copies of:

(a) the application for the decision;

(b) the statement of claim, and where defence has been filed, the statement of defences

(c) all affidavits filed in support of or in opposition to the application; and

(d) the ***decision*** appealed from,

but shall not include the notes of evidence, the grounds of judgment or any memorandum of appeal.

[Emphasis added]

At the commencement of the hearing of this appeal, Puan Sharihah, the learned Counsel for the respondent raised a preliminary objection. The objection was that the appellant had not complied with O. 49 r. 6 (3) (d). She pointed out that the appeal record was incomplete in that it did not contain a copy of the decision as required: what had been enclosed in the appeal record was only a copy of the draft judgment. She argued that a draft judgment is not a "decision". The draft judgment, although had been approved by the solicitors of both parties, it had yet to be approved by the Registrar. Encik Shanmugaiah, learned Counsel for the appellant, on the other hand submitted that enclosing a copy of the draft judgment would suffice for the purpose of r. 6 (3) (d).

I upheld the preliminary objection and dismissed the appeal with costs. I indicated to both Counsels that I shall give my grounds in due course.

In upholding the objection, I had ruled that a draft judgment is not a "decision" for the purpose of r. 6(3) (d). To my mind, it cannot be the intention of the rule that the appellant may enclose in the appeal record a copy of a document which is a manifestation of an unfinished work, of something done halfway. Order 29 of the Subordinate Court Rules stipulates in detail what has to be done after a judgment has been made or given by the Court. The final step in the prescribed procedure is the extraction of the sealed judgment by the party desirous of enforcing the judgment. A draft judgment is of no use to any party wishing to enforce the judgment. For, since a draft judgment does not bear the seal of the Court, it does not have the force of law. I do not think that the Subordinate Court Rules intend to prescribe a different - and lower standard of requirement for the purpose of preparing appeal records, such that a party who is required to enclose a copy of the judgment for the purpose of preparing an appeal record need not have to enclose a copy of the extracted sealed judgment but need only to enclose a copy of the draft judgment. Indeed, from a strict point of view, a draft judgment is not the judgment of the Court. It is only a draft and "a draft implies that it needs perfection and approval" *(per* Haji Mohd. Jemuri bin Sarjan CJ (Borneo) [1994] 1 CLJ 328 in *Hasil Bumi Perumahan Bhd. & 5 Ors. v. United Malayan*

Banking Bhd at p. 333). It is a document drafted and approved by the solicitors of the parties and its content is merely what the solicitors **believe** to be the judgment of the Court. It is yet to be approved by the Registrar, and the Registrar, in vetting and approving the draft will scrutinise it to ensure that in form, it fully complies with the Subordinate Court Rules, in particular, O. 29, and, in substance, it is an accurate statement of the decision of the Court as recorded in the Magistrate's notes of proceeding, and if necessary the Registrar will make the necessary amendments to the draft before approving it.

It is, therefore, my view that "decision" in r. 6 (3)(d), in the context of the present case, means a sealed document that has undergone the whole process as prescribed by O. 29. In other words, it refers to the judgment that has been approved by the Registrar under O. 29 r. 9 (4) and thereafter drawn up and entered in accordance with O. 29 r. 10 (1), (2) and (3).

Finally, there is one related issue: what does the word "copies" in O. 49 r. 6 (3) mean in relation to "decision" in paragraph (d) of subrule (3)? Does it mean mere photostat copies of the decision? In the present case I observe that what had been enclosed in the appeal record are mere photostat copies of the draft judgment. Now, O. 29 r. 11 provides for the issuance of a duplicate of a judgment to any party to a proceeding who applies for it upon payment of the prescribed fee, and O. 52 r. 4 (1)(b) provides for the issuance of a certified copy a judgment to any person who applies for it upon payment of the prescribed fee. In my view, "copies" in relation to decisions does not refer to mere photostat copies of the decision: it refers to either duplicates of the decision obtained pursuant to O. 29 r. 11 or, alternatively certified copies of the decision obtained pursuant to O. 52 r. 4 (1)(b). Uncertified photostat copies are not "copies" for the purpose of subrule (3)(d). This has to be the interpretation to ensure authenticity particularly bearing in mind that the appeal record is filed, not in the lower Court, but in the High Court Registry whereas the original record of the lower Court proceedings are with the registry of the lower Court.